

Rent Stabilization Board

## **FOR IMMEDIATE RELEASE**

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### **RENT BOARD CHAIR LISA STEPHENS RESPONDS TO CIVIL GRAND JURY'S FINAL REPORT**

The Alameda County Civil Grand Jury has just completed a review of the Berkeley Rent Stabilization Board's budget, fees and personnel procedures and issued a Final Report. From the outset of its inquiry, we offered our full cooperation and provided extensive written documentation to support our oral testimony.

Civil Grand Juries can perform a vital role in our modern democracy by reviewing the activities of public agencies and acting as "watchdog" to ensure that those agencies are not abusing the public's trust. We would have welcomed a critical, fact-based analysis of the Rent Board's charge under the City Charter: the administration of the Rent Stabilization and Eviction for Good Cause Ordinance. Unfortunately, this Grand Jury missed such an opportunity. Instead, it has issued a report that ignored significant evidence substantiating the effective enforcement and reasonableness of the administration of Berkeley's rent and eviction laws, choosing to mask a disagreement about what type of rent control law Berkeley should have under the guise of criticism of administrative issues. Even more troubling for a report from a public body is the reliance on inaccuracies, innuendo and "perceived" problems, to give a veneer of plausibility to its conclusions.

In the normal course of events, I would ask the Board to respond to inquiries about the Grand Jury report if and when they arose. The factual errors and insinuation of impropriety in this case are so egregious that to not respond immediately does a disservice not only to the dedicated public servants who provide services to landlords and tenants alike on a daily basis, but to the voters who have consistently supported fair and active enforcement of the Ordinance. The Board may issue a formal response in the future.

Civil Grand Jury testimony is confidential. Testimony and evidence recounted here is mine and that of the Executive Director, Jay Kelekian. Although we do not know the substance or origin of the

complaints that triggered this investigation, the initial inquiries to which we responded and much of the Final Report mirror the June 28, 2011 letter sent to the City Auditor by Sid Lakireddy on behalf of the Berkeley Property Owners' Association (BPOA) (attached). The BPOA has been a consistent opponent of Berkeley's rent control laws since the late 1970's.

It is important to point out that despite a nine-month investigation, the Grand Jury found nothing illegal or unethical, and that none of the Board's activities were outside the scope of the Ordinance. Instead, the Grand Jury opined on what type of rent control Berkeley *should* have without any indication that they understood the distinctive nature of Berkeley's type of rent control and without any consideration of the strengths, weaknesses and costs of different approaches. The voters of Berkeley have consistently supported Berkeley's form of rent control over the 32 years it has been in effect. Our staffing levels and fees are in line with cities that have a similar form of rent control (Santa Monica, West Hollywood and East Palo Alto).

In its report, the Grand Jury either ignored or misstated numerous key points, including:

- The elected Board is accountable to the voters, who have repeatedly made clear that they support full enforcement of the Rent Stabilization & Eviction for Good Cause Ordinance.
- The purpose of the Ordinance is to create a reasonable balance between the interests of landlords and tenants in an unbalanced housing market.
- The increases to the initial annual registration fee *have* been passed through to most tenants and are paid through the rent.
- The Board carries out extensive review and oversight and does so transparently and in public. Board meetings are televised (with transcription), broadcast on radio and web cast to maximize total transparency and accessibility.
- The Board has six standing committees that meet regularly with staff to provide effective oversight.
- The staff at the Rent Board **has** decreased as needs have changed. At the height of rent control, the Rent Board had 36 FTE. Since the passage of vacancy decontrol the staffing level gone down from 27 to between 19 - 21 FTE the past few years.
- Due to the foreclosure crisis and the increased incentive that vacancy decontrol created to evict long-term tenants, the need for the Rent Program's services has **increased**. We receive over 10,000 client contacts a year.
- Overwhelmingly, tenants and most landlords (regardless of their opinion about the law) believe that the services they receive from the Rent Board staff are fair and professional.

- Berkeley's registration fee is within the range of the California cities with strong rent control enforcement policies: Santa Monica, East Palo Alto and West Hollywood.
- Los Angeles, San Francisco and Oakland charge lower fees, but studies have shown that these cities have a far higher rate of non-compliance with their ordinances and they have much larger populations and benefit from economies of scale.
- All Rent Board employees are hired through the City's civil service system, administered by the Human Resources Department, which ranks job applicants by their qualifications. Those hired at the Rent Board are judged the most qualified candidates by this process.
- The Executive Director's pay is similar to what other directors are paid in similar cities.
- The elected Board's compensation has not increased in 25 years, since 1987.
- Like most local and independent governmental agencies, the Board has a lobbyist to represent its interests in Sacramento and has had one since 1984 which includes the period when the majority of the Board were people supported by landlord organizations.
- The Board has detailed published regulations that govern the late payment penalty/waiver process and all waivers are reviewed by the Director to assure rules are applied correctly.
- We are fortunate that at a time when tax limitations and recession are crippling local government services, the Berkeley Rent Board is able to charge adequate fees and ensure that the Rent Stabilization and Eviction for Good Cause Ordinance is properly enforced.

Finally, perhaps what is most disturbing are the numerous unfounded and undocumented references to "**potential** areas of misuse" or "**perceptions** of impropriety" made by opponents of the Program. Anyone can make unfounded accusations and create a "perception" problem – we live in a time when many people claim the President of the United States is not really an American. The Civil Grand Jury's inaccurate and inconclusive review of these issues in and of itself contributes to these "perceptions of impropriety".

The attached document does not discuss "potential" problems or "perceptions" but rather the facts that were presented to, but often not included in, the Grand Jury's analysis or Final Report.

**Lisa Stephens, Chairperson  
Berkeley Rent Stabilization Board  
June 25, 2012**

**Berkeley has chosen effective enforcement of its ordinance**

Berkeley's voters have consistently supported a strong, fair system of rent regulation and the measures necessary to enforce it. The Civil Grand Jury report makes no effort to evaluate what is actually required in order to effectively implement Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance and it ignores the evaluation studies done by the City of Berkeley, as well as those by the City of Los Angeles and by academic researchers. The Civil Grand Jury proclaims that the Rent Board "must reduce the high rental registration fees" and follow the example of the larger cities of Los Angeles, San Francisco and Oakland, all of which charge much lower fees (pp. 65-66). Proper enforcement requires rent registration and verification and unlike Berkeley, Santa Monica and some other cities, these larger cities don't do that. Instead they rely on tenant complaints about rent violations to enforce their ordinances. A recent study commissioned by the City of Los Angeles reported that more than one quarter of all rent stabilized tenants in Los Angeles – well over 100,000 tenant households – had been subject to rent increases over the legal limit and recommended that Los Angeles consider requiring rent registration as Berkeley does.<sup>1</sup> In contrast, Berkeley's recent study found that at most five percent of all tenants were paying an amount over the registered rent ceiling.<sup>2</sup> The Civil Grand Jury chooses as its model a system that allows tens of thousands of tenants to be overcharged and uses this as the basis for arguing that Berkeley's administrative costs are excessive. A system that promotes ongoing education, rent registration and verification adds to the cost of our program, but it costs tenants far more when they are overcharged as in other cities.

**Berkeley has reduced staff since vacancy decontrol while responding to new problems and increased request for services**

In 1986/87, the Rent Stabilization Program had 36 full-time equivalent staff (FTE). Prior to the passage of vacancy decontrol in 1995, the Rent Board had 27 FTE. In the current fiscal year, we have had between 18-21 FTE, despite the Civil Grand Jury report's claim that we have not reduced our activities (p. 65). The Grand Jury report claims, without substantiation, that vacancy decontrol has so greatly reduced the staffing needs of the Rent Stabilization Program that further reductions should be made. In the real world, to take only one example, vacancy decontrol changed the nature of the problems faced by tenants in Berkeley by providing a major incentive for landlords to push out long-term rent stabilized tenants so that they can be replaced with new tenants who would then pay current market rents, instead of the former tenants' much lower stabilized rent. In addition, the foreclosure crisis has increased the number of tenants being told that they must vacate foreclosed properties, even though foreclosure is not a good cause for

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<sup>1</sup> Economic Roundtable, *Economic Study of the Rent Stabilization Ordinance (RSO) and the Los Angeles Housing Market*, 2009, p. 127.

<sup>2</sup> Berkeley Rent Stabilization Board, *Report on the April – May 2009 Survey of Tenants of Registered Rental Units*, March 15, 2010, pp. 21-22.

eviction. This has greatly increased the need for Rent Board action to ensure tenants are aware of and capable of exercising their rights to eviction for good cause. Vacancy decontrol has diminished the need for extensive hearings on issues such as rent increases for capital improvements, but it has increased the need for outreach and education on good cause for eviction.

The Grand Jury fails to acknowledge the actual changes in staffing levels that resulted from decontrol, despite having this evidence presented to them. For example, the Grand Jury was informed that prior to decontrol, the Board had as many as 6.85 FTE Hearing Examiners on staff. In 1995 (the earliest year we were able to get an accurate count of the number of hearings held), the Board had 4.6 FTE Hearing Examiners and conducted 485 hearings. In 2011, the number of Hearing Examiners was reduced to 1.85 FTE and 215 hearings and/or mediations were conducted. Similarly, it was pointed out to the Grand Jury that in 2002, the Board had three attorneys: a Chief Counsel and two individuals at the Staff Attorney III level. The combined 2011 cost for these three positions would be roughly \$475,000 in salary. In 2011 and 2012, the Board has had three attorneys: one Staff Attorney III and two individuals at the Staff Attorney I level. The combined 2011 salary cost for these new individuals serving in adjusted classifications is roughly \$325,000. That is a savings of \$150,000 per year.

The most common complaint about the Program in late 2002 was that the counseling was “biased, inconsistent and unreliable.” In response, since 2004, one entry-level attorney has been assigned to the Public Information Unit to serve as an “attorney of the day.” This is to provide initial and ongoing training to counselors, respond to difficult and more complex cases and provide immediate quality control assurances. Complaints about the quality of counseling are now rare and customer satisfaction surveys of owners and tenants indicate that now citizens are pleased with the service they receive in our Public Information Unit.

The Civil Grand Jury report summarily dismisses these staffing changes as the Rent Board “re-inventing itself” and rather than appreciating that the Rent Board is responsive to changing conditions and the need to improve services, treats this as evidence that it is a “self-sustaining” bureaucracy.

### **The Board provides effective oversight**

The very reason the voters altered the City Charter to create an elected Rent Board was to increase transparency and accountability to the voters because they believed the intent of the Ordinance was not being carried out sufficiently by staff and the appointed Board; it was not solely for “stricter enforcement of the registration fee”, as the Grand Jury report states. The Rent Board takes its mission seriously and has an active committee structure that provides regular and ongoing oversight of staff efforts. Board committees include Budget & Personnel; Eviction, Foreclosure & Section 8, IRA/AGA/Habitability, Outreach, Waivers, Safe & Sustainable Housing and an Ad Hoc Committee on Smoke-Free Housing. Rent Board members typically

attend 25 - 40 publicly noticed meetings a year. The Board places an emphasis on transparency and accessibility to the public. Regular meetings of the full Board are televised with closed captioning, broadcast on radio and live webcast (webcasts are also archived for convenient home viewing).

The Budget and Personnel Committee reviews and discusses **all** changes to the staffing model before forwarding them on to the full Board for final approval. When appropriate under the law, the Board meets in closed session to discuss personnel matters. The Chair and other Board members provide informal feedback and direction to the Executive Director on a regular basis and the Board conducts a detailed formal evaluation of the Director every two to three years. The Grand Jury report did not mention that, similar to other departments in the City, the Rent Board financial practices are reviewed annually by an independent outside auditor, selected by the City. The report and findings of the outside auditor are forwarded to the Board as part of their oversight function. The most recent audit report was provided to the Grand Jury.

In addition, the Board has periodically commissioned studies of the effectiveness of the Program, who it is serving and how well it is meeting its objectives. These studies have resulted in new initiatives to improve program implementation, but were ignored in the report. A recent survey of tenants analyzed the nature of the tenant population assisted by rent regulation and how well they are served by the Program. This study found that new residents of Berkeley were often unaware of their rights and led the Board to work with staff through the Board's Outreach Committee to develop better ways of informing new residents. A recent economic study determined that the rental property owners who own buildings where there has been no turnover since vacancy decontrol (only 400 units out of 19,000) might not be receiving a fair return on their investment. In response, the Board's Individual Rent Adjustment Committee worked with staff to develop a new regulation that will allow them an additional rent increase. These are examples of real program evaluation and real accountability. Both the tenant survey and the economic study were provided to the Grand Jury.

**Berkeley's fees are at the appropriate level to implement the Ordinance and are passed through to tenants**

The Berkeley Rent Stabilization Board has made a policy decision to charge fees sufficient to enable it to fully enforce the Rent Stabilization and Eviction for Good Cause Ordinance. The Grand Jury wants the Rent Board to adopt a different policy that would reduce the fees, and thereby reduce the quality of regulatory oversight, making it easier for some property owners to violate the law. This is not just a simple concern with administrative efficiency, but a substantive policy change.

The recommendation by the Grand Jury to reduce the fees seems to be based on a fundamental misunderstanding of who actually pays the annual registration fee. Although property owners physically write the check, the increases to the initial registration fee are paid by the tenants

through their rents. Representatives from the Berkeley Property Owners Association have repeatedly made this point when arguing for lower fees.

From 1980 through 2004, the Board did an annual analysis of all costs incurred by property owners as the basis for determining the Annual General Adjustment (AGA.) All increases in the Registration Fee were included in this calculation. In 2004, the voters approved a measure that changed the way the AGA was calculated, setting it by law at 65% of CPI rather than through an annual cost study (this change took effect with the AGA approved in October 2005, affecting 2006 rents). Since 2005, the Board has increased fees from \$154 to \$194 per unit. The Grand Jury acknowledges that the Board allows \$48 (\$4 per month) to be passed through to tenants under full rent control. This amount includes the \$40 increase plus a portion of the City's fees for housing code enforcement. The Grand Jury fails to understand or acknowledge that the balance of the fee increases had already been included in the rent through prior AGA increases. For tenants whose rents have ever been decontrolled, this amount is paid out of the rent increase above what they would be paying under full rent control. The very logic of vacancy decontrol is that owners will account for all increases in fees, taxes and other operating costs when they set the new market rent.

Berkeley's fees fall within the normal range for the other California cities that have strong enforcement policies: East Palo Alto, Santa Monica and West Hollywood. Los Angeles, Oakland and San Francisco have very different complaint-based systems as well as economies of scale due to their larger size, so they are not a fair basis for comparison.

Table: Units Registered and Per Unit Fees in Cities with Strong Enforcement Policies

City	Registered Units	Per Unit Fees
Berkeley	19,000	\$194
East Palo Alto	1,900	\$234
Santa Monica	28,000	\$156
West Hollywood	15,000	\$120*

\* West Hollywood also receives General Fund support to operate their Program

The Civil Grand Jury report incorrectly uses the initial 1980 registration fee of \$12 per unit to assert that Rent Board fees, currently \$194 per unit, have increased exorbitantly. As the Executive Director explained to the Grand Jury, the initial fee was set far too low to meet the requirements of the agency. Santa Monica, which provided significantly better administration of its ordinance in the early years, raised its fee to \$72 per unit in 1981, while Berkeley's fee was finally set at a more realistic \$60 per unit by the first elected Board back in 1984.

We note that rents in Berkeley have more than tripled since 1980, so the Rent Board's real operating costs have not increased any faster than the rents. The average owner of rental property in Berkeley saves far more in reduced property taxes due to valuations that have not kept up with market values than they pay in fees to the Rent Board. In addition, as a result of vacancy decontrol, landlords in Berkeley receive an average of an additional \$5,000 per unit annually from tenants, more than 25 times the amount of the annual registration fee.

### **Berkeley hires and promotes the most qualified staff**

The Grand Jury report is simply wrong when it claims that the City of Berkeley hiring lists are not ranked by applicant qualifications and that this could make it easy for the Executive Director to hire minimally-qualified "friends". It is standard practice for the City of Berkeley's Human Resources Department to rank applicants on hiring lists, placing them in three groups: "qualified", "well qualified" and "most qualified". Almost every person hired or promoted by the Executive Director has been ranked in the "most qualified" group. There have been two or three exceptions over more than a decade and each has a specific justification based on the requirements of the position. The Grand Jury was informed of these facts, and could easily have verified this by contacting the City's Human Resources Department. The Executive Director offered to open up his files for every position hired over the previous five years so the Grand Jury's staff could determine that the most qualified person was selected. Regrettably, this offer was declined. Such a review would have revealed that the staff hired in recent years have extraordinary credentials, many with advanced degrees from prestigious universities. Instead, the Grand Jury falls back on possible "perceptions of impropriety" and the incorrect claim that there are no rankings to imply that the Executive Director **may** not have hired the most qualified people. This amounts to use of innuendo to denigrate the reputation of the highly-qualified Rent Board staff, as well as that of the Executive Director and the Board.

The Grand Jury report singles out for criticism the creation of the Deputy Director position and the accompanying hiring process. Again, the Grand Jury states the facts incorrectly. The need for the position of Deputy Director was first identified by the Board in 2006, in response to the heavy demand on the Executive Director and lack of administrative support. At the time, the budget could not support the new additional position. After retirement of several senior staff in 2009, the Board began the process of creating a new position. Any new classification in the City's Civil Service System must be approved by the City's Personnel Board and the City Council. The City Council approved the position and requested an open recruitment and selection process. The City's Human Resources Department conducted an extensive recruitment and evaluated all candidates, recommending the list of individuals to be interviewed by an outside panel. The panel included a City Attorney familiar with rent control laws and administration, the Chair of the Berkeley Housing Authority appointed by the Mayor, and a member of the Berkeley City Council who is often critical of rent control. Dr. Stephen Barton, the first person hired as Deputy Director, was selected as the most qualified candidate by this



panel. Prior to being interviewed by the panel of outside experts, Dr. Barton was ranked “most qualified” by the Human Resources Department staff.

Dr. Barton is a widely published, award-winning expert on housing policy and previously served the City with distinction, receiving a City of Berkeley proclamation of thanks from Mayor Bates in July 2007 when he stepped down after nine years as Housing Director. He retired after 15 months in the Deputy Director position but has remained in this position on an hourly basis in retirement and is expected to do so until his current projects are completed and the Board can make a smooth transition to a new Deputy. The report incorrectly claims that after his retirement as Deputy Director he was “rehired as a part-time senior planner”. The Grand Jury report suggests that the Deputy position had the sole purpose of succession planning and implies that Dr. Barton’s retirement indicates that his hiring was problematic. Dr. Barton was hired because his depth of knowledge of housing policy and City housing programs could facilitate the Rent Board’s efforts to better coordinate its work with other City departments. This project was expected to take approximately two years and he has been Deputy Director on a full-time or hourly basis for nearly two years now.

**Claims that the Rent Board does not follow City procedures are not correct and unsupported by evidence**

The Grand Jury recognizes that all hiring (except the Executive Director) is carried out through the Human Resources Department (p.64) following standard City procedures (p.68) but proceeds to claim that the HR Department does not provide enough oversight of the Rent Board’s personnel procedures (p.71) without providing a single example of such lack of oversight. In fact, the Human Resources Department must review and approve **any** changes in classifications used by a Department. New classifications such as the Deputy Director and Administrative Staff Assistant are also reviewed by the Personnel Board and the City Council. The Grand Jury states that “the BRSB and director should heed the advice from the city departments handling personnel, payroll, and finances” (p.69) but again fails to provide a single example of an occasion when the Board or the Executive Director did not heed such advice. The Director testified that the City of Berkeley purchasing standards were the minimum standards used and that the Rent Board will receive more bids from vendors than required under standard City practices. In addition, the report says that “Berkeley staff appears to be too deferential to the BRSB when problems are identified” (p.69) but does not specify any of the problems supposedly identified by staff from other departments.

**Attorneys play a vital role in advising landlords, tenants and other staff**

It is ironic that, having spent so much time inconclusively discussing unfounded “perceptions” that less than fully-qualified people are hired at the Rent Board, the Civil Grand Jury then goes on to criticize the Rent Board for hiring people they regard as over-qualified. According to the report, the Rent Board has too many attorneys, and their number should be reduced because

attorneys are only necessary to engage in lawsuits and are not needed to advise staff or talk to owners or tenants to explain complex regulatory issues. Again, the Civil Grand Jury provides no basis for this view and ignores the fact that good quality legal advice helps prevent lawsuits. The Rent Board public information and counseling staff handle over 10,000 inquiries from the public annually. In light of the complexity of landlord-tenant laws and regulations, it is essential that counseling staff be provided with ongoing training, quality review and assistance in responding to difficult questions and situations. These are vital functions that are best provided by people with legal training. It is worth noting that the salary differential between a Community Service Specialist II (the position used as a Housing Counselor) and a Staff Attorney I is only \$500 - \$900 per month. We firmly believe that we have the appropriate number of attorneys on staff in the appropriate classifications to reasonably meet our needs. Perhaps the Grand Jury's concern arises because they did not realize that twenty years ago the City Attorney determined that the Rent Board needed to have its own attorneys, rather than relying on the City Attorney's Office, to avoid any potential conflict of interest.

### **The Board is responsive to landlord concerns**

Contrary to the picture provided by the Civil Grand Jury, the Rent Board pays close attention to the quality of its work with owners and managers of rental property. The Board is representative of Berkeley's renter/owner population. Five members of the Board are tenants and four are property owners. The Board has two landlords among its nine members – 22% of the Board – which is a far greater proportion than are in the general adult population. They are both small landlords who owner-occupy one unit and rent out another, which makes them similar to the vast majority of Berkeley landlords who rent out one to four units, although the majority of the units and all of the larger buildings are owned by a small number of landlords who have 15 units or more. More than half of our client contacts are with property owners. The Rent Board recently conducted a customer service survey of landlords and found that, regardless of how they may feel about the existence of rent stabilization in Berkeley, they mostly find the Rent Board staff to be responsive, professional and helpful.<sup>3</sup> This is a tribute to the quality of the Rent Board staff, who work with a large number of small landlords who do not hire professional management to help ensure that they understand both their rights and their obligations under the law and how to meet their legal requirements. The Grand Jury seemed to be impressed when informed that the Board conducted special workshops and developed clear materials designed for new owners, and co-sponsored statewide legislation to make it easier to evict problematic tenants for nuisance but, again, failed to note these efforts in their report.

### **The Executive Director's salary is appropriate**

The Civil Grand Jury was provided a detailed explanation and supporting written documentation on the Board's process in negotiating the Executive Director's salary. The Civil Grand Jury is

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<sup>3</sup> Jay Kelekian, Executive Director, "Customer Service Survey of Berkeley Rental Property Owners and Managers", Berkeley Rent Stabilization Board, June 18, 2012.

critical of the salary that the Board has negotiated with the Executive Director, stating that he is overpaid in comparison to other department heads within the City and that it is not appropriate to compare him to directors of other municipal rent control programs. Unfortunately, the comparison the report makes is to the **current** salaries of certain City of Berkeley department heads, rather than evaluating whether the comparisons and considerations the Board used at the time the salary was negotiated in 2008 were appropriate. At that time, we looked at a combination of the Executive Director's length of service to the City and his current job, the previous director's salary, other Rent Board employees' pay, and the salaries of other City employees with comparable responsibility.

The Board started with the City's salary range for small department heads, and compared the salaries and experience of the other roughly-equivalent department heads. In April 2008, this included the newly-hired City Clerk at \$169,776, the Director of Human Resources at \$161,136, and the Planning Director at \$179,039. We also looked at the previous Rent Board Director, who would have been making \$165,000-168,000 with only cost-of-living adjustments had she stayed. We also conducted a salary study within the agency. Prior to renegotiating his contract in 2008, several other Rent Board staff were making more than the Executive Director. We also recognized that the Executive Director of the Rent Board is a unique position within the city, answerable and serving at the pleasure of the nine elected commissioners. The only other city jobs like this are the Superintendent of Schools and the City Manager. And while the Grand Jury does not believe that we should have looked at the salaries of directors of other rent control programs, we did: at the time, Santa Monica, which is most equivalent to Berkeley, was advertising for a new Administrator at a salary substantially higher than the \$148,000 our Executive Director was making.

With all of these considerations we set the Executive Director's salary at \$160,500, the middle of the range for small department heads, plus any cost-of-living adjustments or other increases the City of Berkeley provided other department heads. We also provided annual step increases to allow the salary to approach the higher end of the salary range as the Director gained even more experience in the position. The Executive Director's current salary reflects this. The \$183,000 the Grand Jury report cites is also within the current range for small department heads of \$137,772-\$189,396. This range is set by the City of Berkeley, not the Rent Board. The current salary for the Administrator of the Santa Monica Rent Control Board is \$189,624.

Finally, we regulate an industry that wants to not only weaken but entirely eliminate rent regulation, with the result that the Director must be capable of managing and providing leadership in an environment that involves high controversy, high scrutiny, personal attack and frequent misrepresentation. Rent stabilization is a specialized field that requires expert administration based on a combination of management skills and deep knowledge of the regulatory system and its history. The Board believes that Executive Director Jay Kelekian has demonstrated the highest level of competence and accomplishment during his tenure at the

Berkeley Rent Board. We have set his salary at a level that helps ensure that he stays in that position as long as possible, rather than finding it attractive to seek another position.

**The Rent Board's Legislative Advocate defends Berkeley's Ordinance, regardless of the political orientation of the Board**

The Grand Jury incorrectly asserts that the hiring of a lobbyist is a "manifestation" of the political orientation of the Board, to advocate for "pro-tenant" legislation.

The charge of any elected body is to promote and defend the policies of the city's or agency's electorate and to fight against the diminution of local control by the state legislature. Most local and independent agencies retain lobbyists, including such unlikely entities as EBMUD and AC Transit.

Since 1984, the Rent Board has retained a legislative advocate (lobbyist) in Sacramento to monitor, support and oppose legislation in conformance with the purposes of the Ordinance. This includes the period of time when the majority of the Board were people supported by landlord organizations. The Ordinance and its provisions are under constant attack and have been for 32 years.

The legislation the Board supports is more accurately characterized as "pro-ordinance" rather than "pro-tenant." While much of the work of the legislative advocate is preventing the erosion of tenant protections, the Board also supports legislation that clarifies the landlord-tenant relationship and promotes the housing policies of the electorate. Examples of legislation of this type that the Board has supported recently include: SB 426 (Calderon) clarifying that certain problematic behavior by tenants can be considered a nuisance under state law; AB 1679 (Bonilla) allowing landlords and tenants to agree to use email to resolve the amount of the security deposit refund and direct deposit of the security deposit after a tenant vacates (sponsored by the California Apartment Association); SB 1229 (Pavley) prohibiting landlords from requiring de-clawing or de-voicing of animals as a condition to rent or remain in a unit; and AB 818 (Blumenfield) making recycling mandatory in all multi-family housing.

The Berkeley Property Owners' Association, California Apartment Association, California Housing Council, East Bay Rental Housing Association, Northern California Rental Property Association; numerous Boards of Realtors, the Apartment Associations of many different cities and counties; all have lobbyists working to alter Berkeley's laws protecting tenants.

## Preliminary Responses to Specific Grand Jury Recommendations:

*Recommendation 12-10: The Berkeley Rent Stabilization Board must reduce the high rental unit registration fees.*

The primary obligation of the Board is to effectively and efficiently implement the Rent Stabilization and Eviction for Good Cause Ordinance. The Board rejects the Grand Jury's view that lower fees take priority over effective implementation. We believe that we have demonstrated that the Board's approach to implementation is far superior to the approach taken by other cities that charge much lower fees and consequently provide significantly less service. Nonetheless, the Board is always concerned with increasing the efficiency of our operations and we believe that the new software systems currently being installed at the Rent Board will make it possible to reduce staffing in certain areas. Given the increasing cost of salaries and benefits, much of it due to rapid increases in health insurance costs, it seems unlikely that such increased efficiency will allow reductions in fees, but it will likely help avoid the need for further increases for some period of time.

*Recommendation 12-11: The Berkeley Rent Stabilization Board must allow landlords to pass through a larger proportion of the registration fee to tenants.*

All registration fee increases are passed through for long-term tenants in units that have not received a vacancy increase to market rent. Up until 2005, they were included in the annual cost study, so that rent ceilings were increased by the amount of any fee increase. For units under full rent control, all fee increases since 2005 (totaling \$48) have been allowed as a separate pass-through to tenants because they are no longer allowed to be included in the Annual General Adjustment, as was the case from 1980-2005.

Since the 2005 change in how the Annual General Adjustment is determined, the Rent Board does not provide for pass-through of registration fees for new tenancies because landlords who newly rent a unit have the right to set the rent \$16 a month higher in order to recoup the cost of the fee and they usually increase the rent by far more than that. Furthermore, nothing prevents a landlord from using a lease that sets a rent as a monthly rent plus a monthly payment of \$16 for the registration fee. Instead of leasing a unit for \$1,250 monthly, the owner could lease it for \$1,250 plus \$16 for the registration fee, for a total of \$1,266, or for \$1,234 plus \$16 for the registration fee.

The Civil Grand Jury suggests that Berkeley follow the example of Santa Monica, whose ordinance requires a pass-through of the registration fee rather than including it in the base rent. Staff in Santa Monica inform us that many landlords there fail to inform tenants of the registration fee, and then add it to the agreed-upon rent after they have moved in. We do not think this is an activity that should be encouraged.

*Recommendation 12-12:*

*The Berkeley Rent Stabilization Board must ask the city of Berkeley Human Resources Department for a thorough position-control audit to evaluate the number of staff, the classifications and workload.*

The Human Resources Department already performs a review any time a department changes a classification to determine if it is justified by the work assigned. This is true if a staff-person is promoted or if the department wishes to upgrade a position, downgrade a position or create a new position. All desired changes in the Rent Board staffing model, under this Executive Director, have been done only after the independent review of the Human Resources Department. A more extensive method for evaluation of the work and appropriate classification is normally done through a process called a "desk audit" which is very labor-intensive, requiring the individual employee to write up a detailed description of everything they do, followed by verification and analysis by the Human Resources staff. It is doubtful that the Human Resources Department does more than half a dozen of these in a year, let alone conduct an analysis of all 21 positions at the Rent Board. To do this for all Rent Board employees would be very time-consuming and costly. Even if the Human Resources Department were willing, we are not sure they are the most qualified to perform the audit requested. A desk audit determines the appropriate classification to perform a set of assigned responsibilities. To determine the appropriate level of staffing is a different task and would require some expertise in what is needed to administer a rent control agency. Alternatively, the Rent Board could ask staff from another rent stabilization program to do a peer review of our agency. This also would involve some cost, to pay for their staff time, especially since the peer agencies are Santa Monica and West Hollywood in Southern California. We note that part of the lending of Berkeley Rent Board staff to other departments that the Civil Grand Jury mentions has included extensive peer review and coaching assistance to the City of East Palo Alto, all of which was reimbursed to the Rent Board for the time spent assisting East Palo Alto.

*Recommendation 12-13:*

*The Berkeley Rent Stabilization Board must ask the city Human Resources Department to provide more comprehensive salary comparisons regularly and use them in setting salaries and benefits, including those of the Executive Director and the Board members.*

All Rent Board staff except the Executive Director are already in civil service job classifications established by the City Council, with salary ranges established by the Council on the advice of the Human Resources Department. When staff is hired initially their salaries are set within the allowable range with the advice of the HR staff and annual increases are determined by the applicable union contract or the City of Berkeley personnel rules for exempt staff.

With regard to the compensation of \$500 monthly plus health benefits provided to elected members of the Rent Stabilization Board, the stipend amount was set in the early 1980's before there was an elected Board. In 1985, the first elected Board continued the level of stipend at \$500 and it has not been increased since. This means that it has lost more than half its value due to inflation over the years. Health benefits were added in 1987, when other elected officials received them. In 1992 the Board majority, which had been elected with the support of the Berkeley Property Owners Association, reaffirmed this policy and allowed Board members to collect their full stipend as long as they attended at least two meetings every month. The current

Board has established rules that deduct additional amounts from a Rent Board member's stipend when they have unexcused absences.

The Rent Board is not like most other City commissions, which are appointed by the City Council and are entirely advisory. Board decisions can only be appealed to the courts and not to the City Council as with other bodies such as the Planning Commission or Zoning Adjustments Board. In addition, the Board has an active committee structure, including Budget & Personnel; Eviction, Foreclosure & Section 8, IRA/AGA/Habitability, Outreach, Waivers, Safe & Sustainable Housing and an Ad Hoc Committee on Smoke-Free Housing. Rent Board members typically attend 25 - 40 meetings a year. We believe the Board's monthly stipend level of \$500 is appropriate when compared with other elected bodies like the School Board (\$1500) and City Council (\$2400).

*Recommendation 12-14:*

*The Berkeley Rent Stabilization Board must conduct annual performance reviews of the executive director to provide more effective oversight.*

The Executive Director is an "At-Will" employee serving at the pleasure of the Board so, in many regards, his performance is being evaluated on an ongoing basis. A thorough formal performance review process takes several months, as it typically includes surveys of staff, stakeholder groups and the public. It is not realistic to expect such an extensive review to be conducted more often than every two or three years. The Board will consider conducting a more frequent, limited review of the Executive Director. We will check with other elected bodies to see what has been the practice in reviewing the City Manager and Superintendent of Schools.



## BERKELEY PROPERTY OWNERS ASSOCIATION

*THE ADVOCATE FOR BERKELEY'S RENTAL HOUSING PROVIDERS*

June 28, 2011

Ann Marie Hogan  
Auditor  
City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704

Dear Ms. Hogan,

The Berkeley Property Owners Association requests an audit of the BRSB by the Office of the City Auditor. The level of spending, both quantitatively and qualitatively, is far in excess of that envisioned by the voters in passing rent control, and has led to unconscionable waste, abuse and possibly even fraud in the activities of the BRSB.

When the Citizens of Berkeley passed a rent control ordinance some 35 years ago, they set the registration fee for each controlled unit at \$12 a year. The \$12 adjusted for inflation would now be about \$30. It is therefore arguable that the scale of the rent control program envisioned by the voters of Berkeley was one with a budget of less than **\$600,000** (\$30 per unit for approximately 19,000 units) today. The annual charge per unit is now \$196 making for annual budget of approximately \$3,500,000.00.

In these times for severe budget constraints for all levels of government, even a proponent of rent control must wonder why.

The following are items that deserve attention from the City Auditor:

1) There have been numerous public allegations of violations of ethical hiring and promotion practices at the BRSB. We brought this to the Council's attention on March 9<sup>th</sup>, 2010. Additionally a follow up letter was sent regarding this matter on November 29<sup>th</sup>, 2010.

We request an audit be done of the employment structure of the BRSB. Is it typical of any department in the City to be so top heavy in professional and management staff? If not, is such a top heavy management structure needed or can costs and greater efficiency be achieved. Is the BRSB overstaffed in

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general? Its principal duties – unit registration, determination of the annual general adjustment and processing individual rent adjustments – have all been significantly reduced over the years and yet the registration fee and the budget goes up every year and the staff has at best been minimally trimmed.

2) Another item that deserves attention from an audit is the maintaining of three full time hearing examiners. At one time the number of hearings the Rent Board conducted were more than a hundred annually and handled the workload with three (3) fulltime hearing examiners. Today the Rent Board conducts less than twenty (20) *actual* hearings annually. Typically the BRSB justifies the maintenance of three (3) full time hearing examiners by pointing to the number of contacts made with people seeking assistance or the number of annual complaints filed. However, the vast majority of cases filed never requires any case work by the hearing examiners and do not proceed to an actual hearing. If the above is indeed true, then we believe there should be more efficient way to run the program without needlessly wasting the public's resources. For instance Oakland uses contract attorneys to be hearing examiners and only pays them by the hour when they are actually needed. And yet the BRSB only recently hired another hearing examiner. Why?

3) The BRSB provides funding for the Eviction Defense Center (EDC) and East Bay Legal Center (EBLC) at a cost of more than \$200,000 per year. We request that an audit be done of these contracts to ensure that the funds disbursed are being solely used to benefit Berkeley residents. The source of the funds is registration fees paid by Berkeley rental property owners and it is important that these funds be used to only fund services that are provided to Berkeley residents.

In addition, the BRSB has annually hired a Sacramento-based lobbyist at a cost of approximately \$100,000 per year. We ask that an audit be conducted to determine if this activity is a justified and needed expense, especially in light of what she has accomplished for Berkeley tenants since being employed.

4) We furthermore believe there is a significant doubt as to the authority of the BRSB to use funds as is currently done for the purposes of defending tenants in Court or for lobbying State government in Sacramento. There are 18 enumerated duties assigned to the BRSB. The Berkeley City Council may have free reign to pursue and fund any activity it feels is in the best interest of the City, but the BRSB does not. *The BRSB is not empowered to engage in any activity which is not supportable by one of these specified duties.* To do so is a misuse of funds by any measure. Relative to funding outside counsel and a Sacramento lobbyist, only the following of the enumerated duties *might* apply:

*F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance,*

*and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:*

- *13. Pursue civil remedies in courts of appropriate jurisdiction.*
- *14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.*
- *17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.*

Nothing specific in these enumerated duties allows for the BRSB to pay for attorneys in a civil action that is not the BRSB which is essentially what is being done by funding the EDC and EBLC. Specifically, these enumerated duties **do not** allow the BRSB to pay for representation by someone who is already a party in a legal action. In addition, the grantees appear to do counseling unrelated to litigation. That activity is not covered by enumerated duties.

We see no justification or authority for the BRSB to fund a lobbyist to represent its interests before the State legislature. Its charge is to administer the law as written, not to influence legislation which seeks to modify the Berkeley rent law. It is more than a stretch to say that # 17 permits engaging lobbying services -- we believe it does not -- and no other of the enumerated duties deal with lobbying in any way at all.

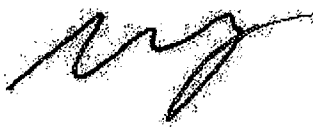
For all these reasons, we believe that the use of BRSB funds for both legal representation for unspecified tenant-driven cases and for lobbying the State legislature is an abuse of authority and subject to audit.

5) The BRSB has an expansive view of its charge. It has funded over the years many activities which cannot be justified given its limited legal functions as defined in the several ordinances which established the Board and which clearly delineate what it is permitted to do. It is now many years ago that the BRSB funded a brochure on earthquake safety which was distributed as a publication of the City of Berkeley but funded by the BRSB (thanks were extended to the Board in the brochure). The publication was a legitimate government action; the funding by the BRSB was not. The Board has sponsored poetry slams and outreach programs. The BRSB has touted itself on billboards at bus stops. It has allowed its hearing examiners to serve other government agencies. BRSB staff was allowed to help East Palo Alto modify its rent control program. Board members spend substantial time at Board meeting discussing and debating matters not within its purview. At these meetings, paid staff serve the Board. The Board has sought involvement in other City activities such as housing inspection programs and spent registration fees in the process. These activities are likely the tip of the iceberg. None of this is meant to judge the value of these activities. They are, however, clearly extra-legal and therefore involve the illegitimate expenditure of public funds. This too should be subject to an audit.

6) At present the BRSB keeps a substantial reserve fund on hand. We request an audit to determine if such a substantial reserve fund is in-line with other City departments of quasi-governmental offices in Berkeley. The BRSB is empowered to raise funds to meet its obligations. Does this extend to large reserves for unspecified purposes?

We believe all of these items warrant an audit and hope one will be undertaken.

Thank you for your attention to this request.

A handwritten signature in black ink, appearing to read 'SL', is positioned above the typed name.

Sid Lakireddy,  
President  
Berkeley Property Owners Association

Enclosure:

Copy of letter sent to Berkeley City Council 29 November, 2010

CC: Berkeley City Council

## **BERKELEY RENT STABILIZATION BOARD**

### **Introduction**

The 2011-12 Grand Jury investigated the operations of the Berkeley Rent Stabilization Board (BRSB). This was in response to a variety of complaints that BRSB is biased in favor of tenants, charges excessive registration fees to landlords, uses improper hiring procedures, and discourages open expression of concerns.

During this investigation the Grand Jury found that the BRSB is a self-sustaining bureaucracy that operates without effective oversight and accountability. The BRSB's independence from the city of Berkeley contributes to excesses in its registration fees, in compensation for the director and members of the board, and to perceptions of impropriety in personnel procedures.

### **Background**

In 1980 after Berkeley voters passed a rent stabilization law to regulate residential rent increases, the city initiated a rent stabilization program. The program was funded by annual registration fees paid by landlords of covered rental property. Non-payment of the registration fee by owners was a problem, so tenant organizations worked to get the voters to pass an ordinance creating an independent rent stabilization agency to provide stricter enforcement of the registration fee.

In 1982 the electorate voted to make the Berkeley Rent Stabilization Board (BRSB) an independent agency not responsible to the city council. The nine member rent stabilization board, elected by Berkeley voters for four year terms, regulates rents for most apartments built before 1980 (covered units) and strives to prevent unlawful evictions. While Berkeley's mayor, city council and city

manager have no direct power over the BRSB, the agency uses city departments for some functions: the city processes BRSB's employee payroll, the city conducts all hiring through the Human Resources department, and the city's finance department processes BRSB's bank deposits and provides purchasing support.

In 1995, the California legislature passed the Costa-Hawkins Rental Housing Act that instituted "vacancy decontrol" which allows landlords to set a new rent when a unit becomes vacant. The landlord has the power to determine the rent with no regulation by BRSB. This means that when a rental vacancy occurs, the landlord can rent the unit at the prevailing market rate. Thereafter the rental increases in covered units must comply with the Annual General Adjustment (AGA) set by the BRSB. This limit is set on future increases to provide rent stability for the new tenant.

After a three-year phase-in period, "vacancy decontrol" began in 1999. Approximately 80% of the covered rental units have tenancies that have turned over at least once since 1999. Berkeley has a high rate of turnover due to its large student population. The rest have "old rent control" tenancies that never have had vacancies so they never received a vacancy increase.

The rent stabilization provisions apply to approximately 19,000 rentals in multi-family units built before 1980. Owners of rental units covered by the law must register their units and pay an annual registration fee. In 1980-81 it was \$12 a unit; in 2011-2012 it is \$194 per unit with penalties for non-payment.

Every unit subject to rent control has a lawful rent increase ceiling. In recent years, the AGA in the rent ceiling has been set at 65% of the consumer price increase for the year, which means that for 2011- 2012 it is 1.6%. BRSB's web site has a full guide to rent control, specifying exemptions, appeals procedures for landlord-tenant disputes, and addressing frequently asked questions ([www.ci.berkeley.ca.us/rent](http://www.ci.berkeley.ca.us/rent)).

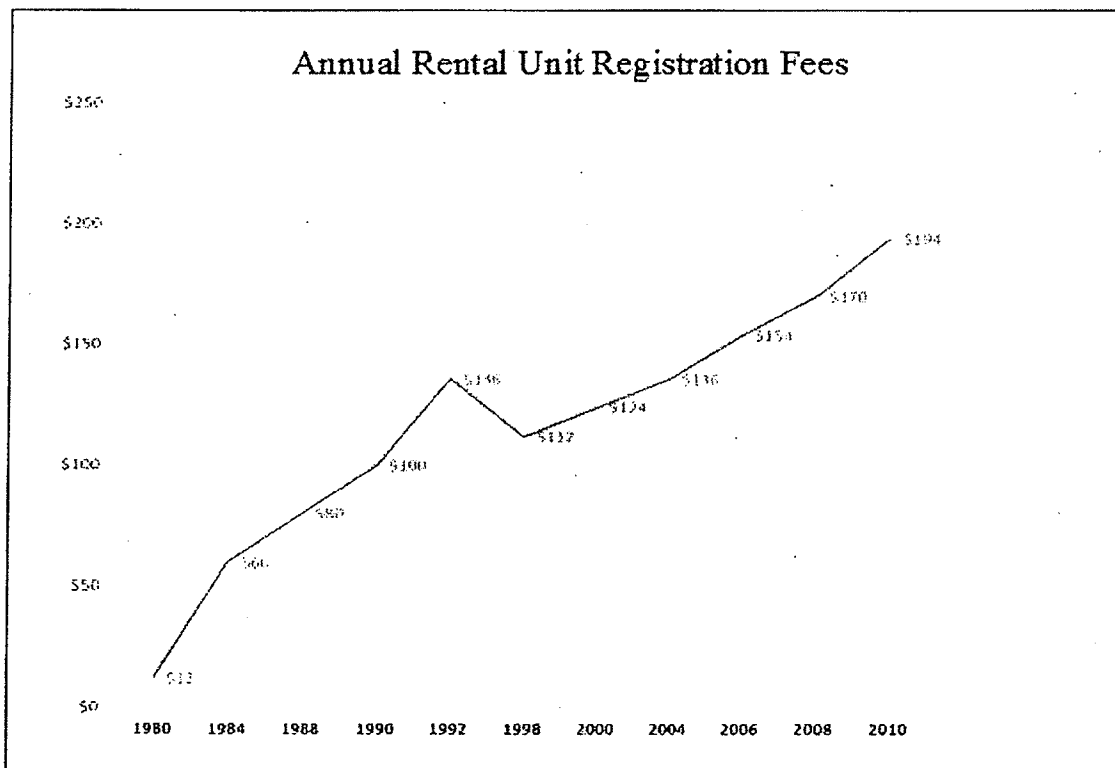
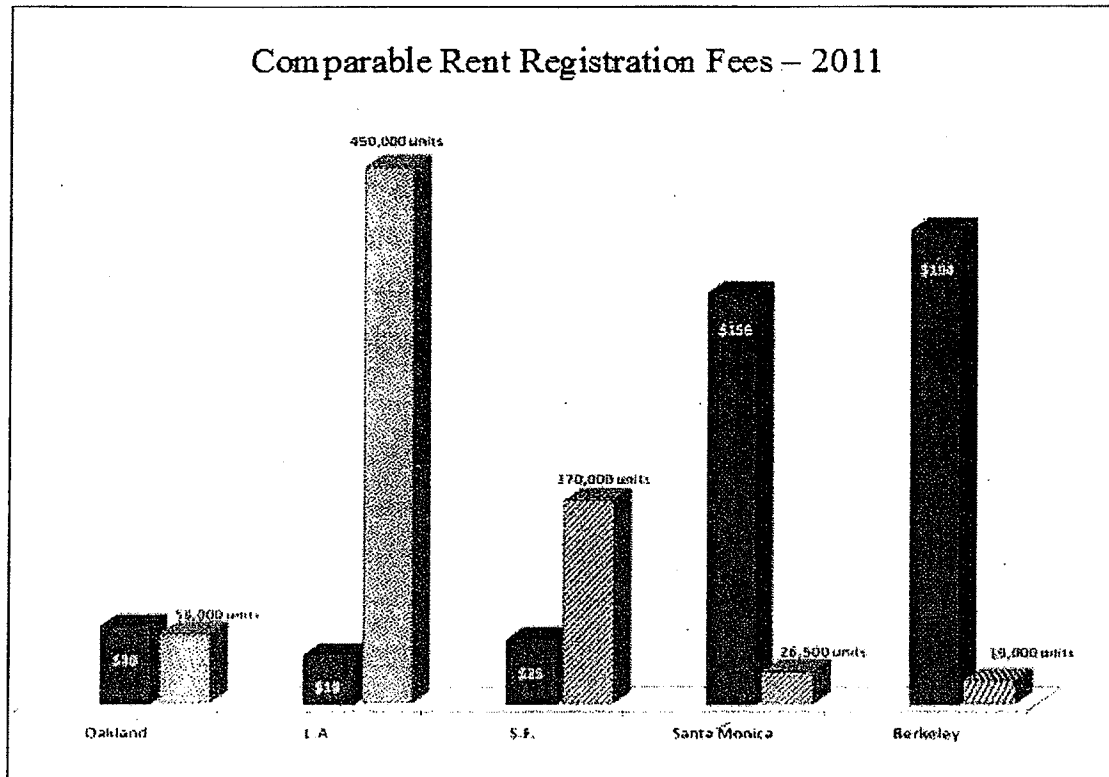
## **Investigation**

During this investigation the Grand Jury interviewed many witnesses including representatives from the board, management, staff, and citizens familiar with BRSB. Grand Jury members attended a board meeting, viewed videos of meetings on the web page, and reviewed materials provided by the city of Berkeley and BRSB. The Grand Jury considered two aspects of BRSB: 1) budget and fees; and 2) personnel procedures.

### Budget & Fees

BRSB operates with 20.95 full time employees and an annual budget of nearly \$4 million in 2010-2011. The Grand Jury found that, even after Costa Hawkins reduced the amount of work for rent boards by allowing rents to rise uncontrolled when vacancies occur, the BRSB did not decrease its total activities or budget, but instead “re-invented itself,” adjusting to the changes to sustain its operations. It appears to be a self-sustaining bureaucracy that operates without effective oversight and only minimal accountability.

BRSB’s budget and staff are large given the number of rental units in Berkeley when compared with the rent stabilization programs in other cities such as Oakland and San Francisco. (*See Chart, Comparable Rent Registration Fees - 2011*) BRSB explains this difference by stressing its active approach to rent control which provides multiple services to tenants. It uses extensive outreach, including publications and seminars, to inform tenants and owners about their rights and obligations. It maintains full and accurate records through reporting requirements for initial rents and eviction proceedings, and provides mediation and dispute resolution sessions. Not all of these services are provided in other cities that have a more passive approach to enforcing rent control.



This relatively large budget and staff are funded by the extraordinary increase in the annual registration fee from \$12 per unit to \$194 per unit between 1980 and 2012. (*See Chart, Annual Rental Unit Registration Fees*). The Grand Jury was struck by the lack of controls over the increase in the registration fee. The landlords pay the fee for services primarily benefiting tenants. This allows the BRSB to maintain its operations with minimal external controls.

The Grand Jury recognizes Berkeley voters have supported active rent control along with their commitment to neighborhood preservation and limited growth. The Grand Jury heard conflicting testimony about whether BRSB represents the interest of landlords as well as the tenants. The Grand Jury finds that the current board is primarily composed of representatives from a pro-tenant slate. One manifestation of this is that the board hires a lobbyist who is paid \$50,000 a year to advocate for state legislation that is pro-tenant. In addition, the BRSB contracts with local non-profits to provide legal advice and representation to tenants fighting evictions. Another manifestation is that landlords are only allowed to pass \$4.00 a month of the registration fee to tenants for a total of \$48 a year. In contrast, Santa Monica, like Berkeley, takes an active approach to rent control, yet it lets landlords pass \$13.00 a month to the tenants for a total of \$156 a year thus covering Santa Monica's entire registration fee. The Grand Jury concludes that a larger pass-through of the registration fee to tenants in Berkeley would be a fairer way to finance rent control and one which creates a potential check on excessive increases in the registration fee because the tenants would share more of the burden.

The Grand Jury also finds that the penalties for non-payment of registration fees in Berkeley are extremely high and substantial staff and board time is devoted to pursuing payment and handling waiver requests. The penalty is 100% of the registration amount, imposed one day after the fee is delinquent. This is much higher than other city-imposed penalties. For example, the transient occupancy tax (hotel tax) penalty is 10% of the amount due, and the parking space rental tax is also 10%. The BRSB reported that several hundred requests are processed



each year to have the penalty reduced or waived entirely and that some relief is granted in over 90% of the cases. The Grand Jury learned that these waivers are discretionary and most often reviewed by staff, leading the Grand Jury to question the potential for misuse and arbitrary application. In 2010 the BRSB legal unit filed in small claims court against 140 properties and subsequently filed liens on 40 of those properties.

The Grand Jury found that the size of the staff has not decreased commensurate with the decrease in the workload after vacancy decontrol. Furthermore, the number of hearings has gone down from 364 in 1999 to 128 in 2011. The emphasis now is on mediation because it is more cost effective. The number of hearing examiners has also gone down, yet enough remain that they are used for other jobs and "rented out to the city" which reimburses BRSB.

Berkeley voters support the mission of the BRSB when they elect members to the board. However, even given that approach there are excesses that make the Grand Jury question whether the BRSB is managing its resources appropriately. Increases in fees without justification raise questions for the Berkeley electorate to consider. Other cities with significantly more units manage rent control with lower fees.

#### Personnel Procedures

The Grand Jury heard allegations about improper personnel procedures: hiring does not follow standard procedures, no appeals process exists, positions are created and hires made based on friendships rather than qualifications, and commitments are made to new hires before the proper procedures are followed. The Grand Jury also heard contradictory testimony that all hiring and disciplinary procedures follow standard procedures, are approved by the BRSB, and the most qualified person is hired.

We heard that only people "on the list" developed by the city of Berkeley's Human Resources (HR) department's screening panel are hired. However, the Grand Jury heard testimony that being on the list is not a guarantee of quality. Names on the list are not ranked and their presence on the list may just indicate that they have met the minimum qualifications. Then, according to "the rule of the list," anyone who makes the list can be hired. There are rules limiting hiring relatives but no rules limiting hiring friends. So it is possible that proper formal procedures can be followed while there are also perceptions of impropriety.

The Grand Jury concludes that perceptions of impropriety must be addressed by the board and the director. We also conclude that the BRSB and director should heed the advice from the city departments handling personnel, payroll, and finances. In addition, Berkeley staff appears to be too deferential to the BRSB when problems are identified.

Another complaint about personnel procedures concerned the inappropriate creation of new positions and hiring of friends. For example, Berkeley HR and the city council had to review BRSB's plan to create a new position of deputy director because it involved a change in the charter. HR supported the new position, which had been justified on the grounds that it would provide for an orderly succession. The city council questioned why the position was needed in a relatively small unit. In the end it was approved. The problematic nature of the appointment was underscored when the deputy director, hired ostensibly for succession planning, retired after a year. The deputy director was then rehired as a part time senior planner for the BRSB as an annuitant, a part-time position where a retired employee is paid while receiving retirement benefits. The Grand Jury questions whether there was a need to add a deputy director position in an agency this size. And again we think the board and the city need to be more diligent in questioning the director's recommendations to increase staff size.

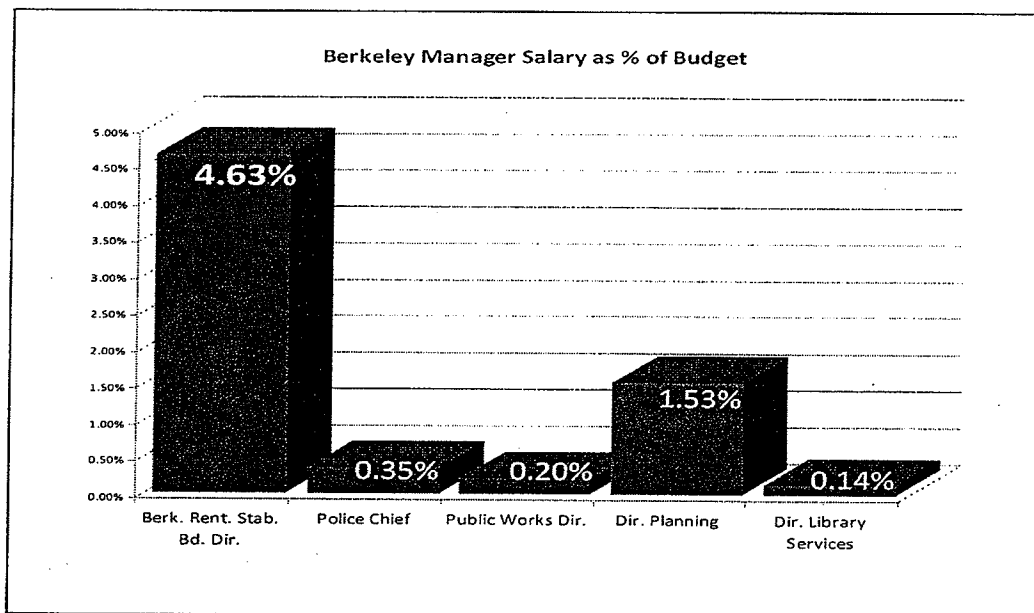
In investigating the salary of the BRSB's executive director, the Grand Jury found that it is well above the salaries of department directors in much larger

departments in Berkeley and other cities. The director is one of the most highly compensated staff members in the city. The director makes a salary of \$183,000 (excluding benefits) in an organization with 20.95 full time equivalents (FTE) and a budget of \$3.95 million. In comparison, Berkeley's director of Public Works makes \$181,000 (excluding benefits) in an organization with 326 FTEs and a budget of \$90 million.

#### **BERKELEY MANAGERS' SALARIES**

Agency	BRSB Director	Police Chief	Public Works Director	Director of Planning	Director Library Services
Salary	\$183,000	\$203,680	\$181,000	\$183,440	\$175,475
Annual Budget	\$4 million	\$58 million	\$90 million	\$12 million	\$128 million
# of Employees	21	296	326	65	117

As shown in the chart below, the salary of the BRSB director is an inordinately high percent of the agency's budget.



The Grand Jury heard testimony that the BRSB asked the city HR to conduct a comparative compensation study for the director's position. Such studies should not simply compare directors' salaries at a handful of other active rent control agencies, but must also compare the salaries of other Berkeley city directors.

Similarly we question the compensation and benefits for board members. They are paid \$500 a month plus benefits including health benefits, which is excessive compared with other rent boards and local government commissions and committees. We find that the Berkeley HR department does not provide enough oversight of the BRSB personnel procedures.

Another complaint was that the proportion of attorneys on staff was too large in relation to the total staff size thus keeping BRSB expenditures higher than appropriate. While most city of Berkeley departments utilize the city attorney's office for their legal needs, the BRSB has several attorneys on staff. Now that the legal workload has decreased as a result of Costa Hawkins, the proportion of attorneys should be reduced. We found that some attorneys were being used to do jobs not requiring legal training. In addition to having a staff supervisor, there is an "attorney of the day" assigned to the BRSB. The Grand Jury learned the current workload does not justify the number of lawyers, exacerbated by the BRSB's justification that the attorney of the day's job is to advise other staff to not give legal advice. Additionally, the number of hearings has declined over the years, causing the Grand Jury to question if there is a better use of public funds in this staffing situation. The Grand Jury reviewed documents provided by the BRSB and heard testimony that several of the positions in the BRSB spend time doing work for other city departments rather than doing work for the BRSB.

BRSB has not asked the city of Berkeley's HR department to perform an audit to determine appropriate staffing levels. Without a formal position control audit, there is no effective oversight of the relationship between the work required and the raising of fees. It appears to the Grand Jury that the BRSB seeks to reap the

benefits of being in the civil service system while not applying the city's rules when they determine it benefits them.

The Grand Jury also heard that there was not an appeals process for personnel matters. We found that there is an appeals process. The executive director hears appeals and then if it is denied, the appeal goes the city's grievance board and then to the city manager who delegates the job to the HR director. Unionized employees' procedures vary by union and contract.

Another complaint is that BRSB'S board is not exercising sufficient oversight of the executive director. The Grand Jury did not assess complaints regarding the executive director's management style or whether he has created an atmosphere that discourages questioning. The board evaluates the executive director every three years including doing a 360-degree evaluation asking many of the stakeholders to assess his work. The responses showed substantial support for the executive director but also some concerns that he discourages open expression of views. Providing effective oversight of an executive is the responsibility of a board particularly when the agency operates independently from traditional administrative control. The Grand Jury determines that the board is too deferential to the executive director and urges the board to improve its oversight. Evaluations should be done annually and the board should give more feedback to the director, urging him to more appropriately address personnel issues.

## **Conclusion**

BRSB is a governmental entity with its own source of revenue – registration fees. The board is elected by Berkeley residents and is generally pro tenant with little accountability to the landlords who fund the operations of the board. Thus, the board has little to no incentive to control costs. In an era where most governmental entities must control costs, BRSB has been exempt from these pressures because it has a dedicated source of funds and is a self-sustaining

bureaucracy. Berkeley voters are the only ones who can change the direction of the BRSB and so far they have not shown any inclination to do that.

While the BRSB does provide rent control that voters appear to want, the board is not providing strong enough oversight, not holding the agency accountable – not scrutinizing personnel hiring, not questioning compensation, not balancing both landlord and tenant interests, not trying to constrain increases in registration fees. For example, the executive director makes an exorbitant salary that comprises nearly 5% of the entire budget of the agency. The Grand Jury finds this unacceptable and concludes the board needs to reprioritize services and to reduce costs not only in its administration but in services to the citizens of Berkeley.

The Berkeley Rent Stabilization Board's independence from the city of Berkeley contributes to its excesses. Too often, it operates without traditional administrative controls that could be provided by the city of Berkeley.

## **RECOMMENDATIONS**

### *Recommendation 12-10:*

The Berkeley Rent Stabilization Board must reduce the high rental unit registration fees.

### *Recommendation 12-11:*

The Berkeley Rent Stabilization Board must allow landlords to pass through a larger proportion of the registration fee to tenants.

### *Recommendation 12-12:*

The Berkeley Rent Stabilization Board must ask the city of Berkeley Human Resources Department for a thorough position-control audit to evaluate the number of staff, the classifications and workload.

**Recommendation 12-13:**

The Berkeley Rent Stabilization Board must ask the city Human Resources department to provide more comprehensive salary comparisons regularly and use them in setting salaries and benefits, including those of the executive director and the board members.

**Recommendation 12-14:**

The Berkeley Rent Stabilization Board must conduct annual performance reviews of the executive director to provide more effective oversight.

**RESPONSES REQUIRED**

Berkeley Rent Stabilization Board

*Recommendations 12-10 through 12-14*